

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

KERRY WHIPKEY and  
ROBYN WHIPKEY,

Plaintiffs,

v.

C.A. NO.: 2-09-CV-225-J;

RUNNING D CONSTRUCTION, LLC.  
and JUSTIN SHEA DAVIS

Defendants.

/

**MOTION TO STRIKE DEFENDANT'S ANSWER**

COMES NOW the Plaintiffs, KERRY WHIPKEY and ROBYN WHIPKEY, by and through their undersigned counsel, and hereby moves to strike the answers of RUNNING D CONSTRUCTION, LLC. and states as follows:

1. On September 8, 2009, Plaintiffs filed a complaint for unpaid overtime compensation under the Fair Labor Standards Act, as amended, 29 U.S.C. §201, et. cet. ("FLSA").
2. On January 4, 2010, Defendants, through counsel, filed an answer in response to Plaintiffs' Original Complaint.
4. On February 23, 2010, Counsel for Defendants filed an Unopposed Motion to Withdrawal as counsel for the Defendants.
5. On March 9, 2010, the Court approved the Unopposed Motion to Withdrawal of Attorneys Matthew W. Sherwood and Kelly D. Utsinger of Underwood, Wilson, Berry, Stein, & Johnson, P.C.

6. As a corporate Defendant cannot appear *pro se*, Defendant, RUNNING D CONSTRUCTION, LLC., has had ample time to obtain substitute counsel and has failed to do so. This Court should sanction the Defendant by striking the answer of RUNNING D CONSTRUCTION, LLC. and ordering the Clerk of Court to enter a default.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order striking the response filed by RUNNING D CONSTRUCTION, LLC., and instruct the Clerk of Court to enter a default.

DATED this 19<sup>th</sup> day of April, 2010

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/s/ CHARLES L. SCALISE

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

\_\_\_\_ I HEREBY CERTIFY that I mailed the foregoing document by first class mail to the following non-CM/ECF participants: Running D Construction, LLC., Registered Agent, Justin Shea Davis, 14314 Burrell Street, Amarillo, Texas 79119, and to Justin Shea Davis, 14314 Burrell Street, Amarillo, Texas 79119 this 19<sup>th</sup> day of April, 2010.

/s/ CHARLES L. SCALISE